



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-86-11

### FACTS:

You are an associate justice of the Superior Court. On the evening of April 11, 1986 and during the entire day of April 18, 1986, you attended and participated in a seminar at a law School at the invitation of a member of the law School faculty. You participated in the seminar as a visiting expert from the Massachusetts judiciary and addressed principles of sentencing based on your experience as a trial judge. In preparation for the seminar, you prepared and submitted written sentencing decisions based on eight presentence investigation reports. You obtained assistance in typing the reports from a secretary employed by the Superior Court to which you were assigned at the time. All other preparation and "homework" was done on your own time. Your attendance and participation in the seminar was approved by the chief justice of the Superior Court, and your participation on the date of April 18, 1986 was recorded as an "education day." As you describe it, a judge on leave on an education day is paid his regular judicial salary but is excused from performing customary courtroom duties on that day. The judge will attend or participate in a program related to judicial education. The sponsor of the April 18, 1986 sentencing seminar has offered you an honorarium for your participation in the seminar.

### QUESTION:

Does G.L. c. 268A permit you to accept the honorarium for your participation in the seminar on April 18, 1986, a day which was recorded as an "education day."

### ANSWER:

No.

### DISCUSSION:

As an associate justice of the Superior Court, you are a "state employee" for the purposes of G.L. c. 268A, Section 23(b)(2) of G.L. c. 268A prohibits a state employee from using his official position to secure for himself unwarranted privileges which are of substantial value and which are not properly available to similarly situated individuals. See, St. 1986, c. 12, eff. April 8, 1986. The propriety under G.L. c. 268A of the receipt of honoraria is governed by the provisions of G.L. c. 268A, s.23. In 1980, the Commission concluded in EC-COI-80-28 that a state employee could accept an honorarium without violating s.23 if all of the following requirements are met:

- 1) State supplies or facilities not available to the general public are not used in the preparation or delivery of the address;
- 2) State time is not taken for the preparation or delivery of the address;
- 3) Delivering the speech is not part of the employee's official duties;
- 4) Neither the sponsor of the address nor the source of the honorarium, if different, is a person or entity with which he might reasonably expect to have dealings in the employee official capacity.

The requirement that state time not be taken for the preparation or delivery of the address was the focus of a later advisory opinion, EC-COI-81-95. In that opinion, the Commission advised a state employee that he could receive an honorarium for participating in a training program only if (a) he did not receive compensation for his regular state employee responsibilities that day or (b) he chose to be absent under vacation leave or personal leave for that day. It is, therefore, an unwarranted privilege for a state employee to receive both his regular state compensation while serving on a state assignment and also compensation from other sources for performing work during the same time period. By virtue of your use of an "education day," you have received your regular judicial compensation for your participation in the April 18, 1986 seminar. Your acceptance of an honorarium from the seminar sponsor for your participation the same day would secure for you an unwarranted privilege which is not properly available to other members of the judiciary.

Three final points need to be addressed briefly.

1. The Commission assumes that the honorarium to be offered will exceed fifty dollars in value. If so, the honorarium will be something of substantial value for the purposes of s.23(b)(2). See, *Commonwealth v. Famigletti*, 4 Mass. App. 584, 587 (1976); {Commission Advisory No. 8} (1985). If the honorarium is less than fifty dollars, the restriction of s.23(b)(2) does not apply.
2. The Commission's conclusion turns on the characterization of April 18, 1986 as an "education day". If you were to use a vacation or personal day for your seminar activities, you would no longer be paid by two sources for performing a judicial assignment on the same day. EC-COI-81-95. You would be required, however, to comply with the remaining standards for the receipt of honoraria set out on page 2 of this opinion, including reimbursing the commonwealth for state resources used in the preparation of the sentencing decision.[1]
3. Irrespective of whether April 18, 1986 is characterized as an "education day", vacation or personal day, you may accept reimbursement from the sponsor for meals, lodging, travel and postage reasonably incurred in the preparation and presentation of the seminar. EC-COI-80-28.

DATE AUTHORIZED: May 20, 1989

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[1] Your seminar services on the prior evening do not appear to raise the same problems under s.29 because you are not receiving judicial compensation for the same services. Assuming that your time is divisible, you may, therefore, receive an honorarium which reflects the portion of your seminar services which were performed on the prior evening provided that the other aforementioned honorarium standards are satisfied.